

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10596 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

VASANTIDEVI H KOTHARI

Versus

RB SHUKLA OR SUCCESSOR

Appearance:

MR SN SOPARKAR for Petitioner
MR AKIL KURESHI for MR MANISH R BHATT
for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 05/03/2001

ORAL JUDGEMENT

In this petition, which is filed under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or a writ of certiorari or any other appropriate writ or direction to quash and set aside order dated October 15, 1999 passed by the Commissioner of Income-tax, Surat holding that the amount paid by the petitioner for the use of extra Horse Power of electricity, is in the nature of penalty and, therefore, not allowable as business expenditure.

2. The petitioner is proprietor of M/s. Shubh Laxmi Metal Industries, which is engaged in the business of manufacture of wires from copper bars. For A.Y. 1995-96, the petitioner filed return of income and declared total income of Rs. 42,320/-. Vide order dated March 24, 1998, the Income-tax Officer made assessment on the income of Rs. 2,15,717/-. While doing so, the Assessing Officer made disallowance of Rs. 1,10,171/paid by the petitioner to Gujarat Electricity Board on the ground that the said amount was paid by the petitioner as and by way of penalty. Against the said order, the petitioner preferred revision application before the Commissioner of Income-tax, Surat under section 264 of the Income-tax Act. The Commissioner of Income-tax, Surat has partly allowed the revision application, but rejected the claim of the petitioner regarding allowability of Rs. 1,10,171/- vide order dated October 15, 1999, giving rise to the present petition.

3, We have heard the learned counsel for the parties. The Commissioner of Income-tax, Surat has taken the view that extra amount paid by the petitioner was for unauthorised use of electricity and, therefore, penalty in nature. However, the order impugned does not indicate that the Commissioner of Income-tax had taken into consideration the Kabulatnama given by the petitioner to the Gujarat Electricity Board as well as Clauses 33A, 33B & 34 of the Conditions and Miscellaneous Charges for Supply of Electrical Energy stipulated by the Gujarat Electricity Board, before concluding that the extra amount paid by the petitioner for unauthorised use of electricity was as and by way of penalty. The order passed by the Assessing Officer shows that the Assessing Officer had taken into consideration the statement of the petitioner which was recorded in Hindi, but the order passed by the Commissioner of Income-tax does not show that he has taken into consideration the statement of the petitioner. Thus, we are of the opinion that the relevant documents were not taken into consideration by

the Commissioner of Income-tax before deducing that the extra amount paid by the petitioner for unauthorised use of electricity was as and by way of penalty. The Commissioner of Income-tax has failed to record reasons in support of his conclusion that the extra amount paid by the petitioner for unauthorised use of electricity is in the nature of penalty. As the impugned order is not informed by reasons, we are of the opinion that the same is liable to be set aside and the matter deserves to be remitted to the Commissioner of Income-tax, Surat for fresh determination.

For the foregoing reasons, the petition partly succeeds. The order dated October 15, 1999 passed by the Commissioner of Income-tax, Surat under section 264 of the Income Tax Act holding that the extra amount paid by the petitioner for unauthorised use of electricity is in the nature of penalty, is set aside. The matter is remitted to the Commissioner of Income-tax, Surat for fresh decision, who shall decide the matter in accordance with law after affording an opportunity of being heard to the petitioner. Rule is made absolute to the extent indicated hereinabove, with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah, J.)

(patel)